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DRAFT ARTICLES ON FISHERIES

This proposal for a new fisheries régime is intended merely as a basis for discussion. It is not complete and does not necessarily reflect the final views of the delegations submitting it.

These draft articles would be incorporated into an over-all treaty on the law of the sea.

Article 1

1. Subject to the articles set forth below, all States shall have the right to allow their nationals to engage in the exploitation of the fishery resources of the sea.

2. Such exploitation shall be regulated for the benefit of nationals of all States in such a way as to ensure the rational exploitation and conservation of the fishery resources of the sea in the interest of mankind as a whole.

3. For these purposes:

(a) In the zone referred to in article 5, coastal States shall enjoy the fishing rights defined in these articles;

(b) All States shall maintain close co-operation at both the world and the regional levels in accordance with the following articles.

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PART I: PRINCIPLES OF RATIONAL EXPLOITATION AND CONSERVATION

Article 2

1. Measures necessary for maintaining, re-establishing or attaining the maximum yield from fishing shall be adopted by States and organizations. These measures shall be based on scientific data and take into account technical and economic considerations. They shall be adopted, subject to these articles, in the light of the regional situation and without discrimination as to form or substance.

2. The measures referred to in paragraph 1 shall be formulated having regard to the need to secure a supply of food for human consumption.

Article 3

The measures referred to in article 2 may include:

- (a) fixing the total allowable catch and its possible allocation;
- (b) regulation of fishing activity;
- (c) the establishment of closed seasons;
- (d) a temporary ban on fishing in certain areas of the sea;
- (e) any technical measures (relating, for example, to fishing gear, mesh sizes, fishing methods, minimum sizes of fish caught, etc.).

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PART II: RIGHTS AND OBLIGATIONS OF COASTAL STATES

Article 4

In a zone beyond its territorial sea,* hereinafter called "the zone", the coastal State may exercise the rights and powers set forth in these articles.

Article 5

1. The zone shall not extend beyond (x) nautical miles measured from the baseline of the territorial sea.
2. The extent of the zone shall be determined by the coastal State, within the limit referred to in paragraph 1, taking into account all relevant factors, in particular the geographical characteristics of the area and the fishery resources and their distribution off its coasts.

Article 6**

Where the coasts of two States are opposite or adjacent to each other, the delimitation of their respective zones within the limit specified in article 5 shall, failing agreement between them, be established in accordance with the provisions of article ...

Article 7

1. When in the interests of conserving any species it is necessary for the coastal State to fix a total allowable catch within its zone, it shall determine the total allowable catch so as to ensure the maintenance of the maximum sustainable yield.
2. The coastal State shall submit the figures determined pursuant to paragraph 1 to the appropriate regional or sectoral organizations. Those organizations may, on the basis of all relevant scientific data, recommend other figures.
3. Two or more coastal States may by mutual agreement decide to request a regional or sectoral fishing organization of their choice to determine the figures provided for in paragraph 1 for all stocks exploited jointly.

* The breadth of the territorial sea (maximum 12 miles) will be dealt with elsewhere, in the provisions relating to the territorial sea.

** As this article concerns a problem that is not peculiar to fisheries, it should contain a reference to a more general provision in the Convention.

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Article 8

1. Within the framework of the above-mentioned aims of rational exploitation and conservation of fishery resources and taking account of the maximum allowable catch determined by the coastal State pursuant to article 7, as well as any recommendations made by appropriate organizations also pursuant to that article, the coastal State may reserve in its zone that part of the allowable catches of one or more species which vessels flying its flag are able to take.
2. When exercising its right under paragraph 1, the coastal State shall duly take into account the right of access of other States and particularly of:
 - (a) States which have habitually fished in the zone;
 - (b) Developing States of the same region, provided such States have not invoked paragraph 1 above to reserve for vessels flying their flag all the fish they can catch in their own zone;
 - (c) States whose economies are to a very large extent dependent on fishing, where such States have not satisfied their needs by invoking the provisions of this article;
 - (d) States of the same region with limited fishery resources whose economy is especially dependent on fishing;
 - (e) Land-locked States.
3. In implementing this article, allowance shall be made for cases where the coastal State adopting the measures referred to in paragraph 1 is a developing country or a country whose economy is to a very large extent dependent on fishing.

A coastal State may claim the same right with respect to those parts of its territory in which the population is especially dependent on fishing for its livelihood and lacks alternative opportunities for permanent employment.

Article 9

1. A coastal State wishing to avail itself of article 8 shall, in accordance with article 13, notify the competent organization of the proposals concerning the rights to one or more species in its zone which it wishes to have reserved to vessels flying its flag and those to be granted to other States.
2. The organization shall immediately hold consultations on these proposals.
3. Failing agreement within four months of notification, the coastal State may determine, at a level equal to or lower than the proposed level, the rights it will reserve to vessels flying its flag.

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4. Any State which considers that such decision taken by the coastal State is in violation of the rights accruing to it under article 8 may, within two months, have recourse to the procedure for settlement of disputes provided for in article 20.

5. Pending the decision of the Special Committee, the decision taken by the coastal State shall remain provisionally valid. However, the State which has referred the matter to the Special Committee, pursuant to paragraph 4 above, may in addition request the latter to prescribe certain provisional measures. The Committee shall rule thereon within six weeks.

6. Every year, the decisions taken by the coastal State and the Special Committee and the agreement of the States concerned, as provided for in the preceding paragraphs, may be reviewed by the organization at the request of any of the interested parties. The provisions of paragraphs 2 to 5 shall apply to such review.

Article 10

In accordance with the principles of rational exploitation and conservation, the regulatory measures referred to in articles 2 and 3 shall be taken by the coastal State in its zone.

Article 11

Vessels fishing in a zone subject to regulation under the conditions provided for in article 10 shall respect the relevant regulations adopted by the coastal State.

The States whose flags are flown by such vessels shall take the necessary steps to ensure that these regulations are respected.

Article 12

1. The coastal State may stop, board and inspect fishing vessels within its zone, if it has valid reason to suspect that they have committed a breach of the fishery regulations as provided for in these articles.

2. The coastal State may also prosecute and punish offences committed by such vessels unless the flag State has established a procedure permitting the prosecution and punishment of breaches of the fishery regulations of the coastal State adopted in conformity with these articles.

In that case, the coastal State shall send a report attesting the breach of regulations to the flag State and shall furnish the flag State with any particulars constituting evidence that such breach has been committed. Within a period of six months from the receipt of the report attesting that breach, the flag State shall make known to the coastal State whether or not it has brought the matter before its judicial authorities so that proceedings may be instituted.

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Should the flag State not bring the matter before its judicial authorities, or should it fail to reply, the coastal State shall have the right to refer the matter to its own courts.

If the flag State has decided to bring the matter before its judicial authorities, it shall inform the coastal State of the outcome of the proceedings.

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PART III: REGIONAL OR SECTORAL FISHERY ORGANIZATIONS

Article 13

1. Fishery organizations, hereinafter called "organizations" shall exercise the functions laid down in these articles. These organizations shall be responsible either for a region or for a given species.

States whose vessels fish or are concerned with and equipped for fishing within a region shall establish a regional organization if one does not already exist. Coastal States of the region, as well as any State whose vessels fish or are concerned with and equipped for fishing in this region, shall be members of this organization.

States whose vessels fish or are concerned with and equipped for fishing for certain species such as tuna and whales shall establish a sectoral organization. This organization shall be established on a regional or world-wide basis if a competent sectoral or regional organization does not already exist. Coastal States in whose zone this activity is exercised, as well as any State whose vessels fish or are concerned with and equipped for fishing for the species in question, shall be members of this organization.

2. The constitutions or rules of procedure of these organizations shall ensure their most effective operation. In particular, they shall provide that the measures referred to in article 14 are as a general rule adopted by a majority greater than a simple majority, but not necessarily unanimously, and that they are binding upon the States members of the organization.

3. Where an appropriate regional or sectoral organization has not yet been established, the coastal State concerned shall consult with other interested States if it is unable to take the action provided for under articles 7 and 9 with respect to such an organization. The decisions taken by the coastal State after such consultations shall be reviewed each year pending the establishment of the organization.

Article 14

1. The organization shall determine the procedures for applying the principles of rational exploitation and conservation as well as the basic principles of the measures to be adopted for this purpose.

2. Within the limits of their competence, they shall exercise the power to adopt the regulatory measures referred to in articles 2 and 3 in any part of a region beyond the zone in which a coastal State exercises such powers in accordance with article 10.

3. The organizations shall co-ordinate the scientific research programmes of member States in order to ensure the supply of appropriate scientific information.

Article 15

Vessels fishing in the area of competence of an organization are bound to comply with the measures adopted by such organizations.

Flag States parties to this Convention shall take the necessary steps to ensure such compliance.

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Article 16

The organization shall supervise the execution of its decisions.

Supervision shall be based, inter alia, on the examination of statistics which States members of the organization are required to compile and make available, and of all other data obtained from them.

Article 17

1. Within the framework of an organization, its member States may decide, at the request of a coastal State, to establish in the zone of that State international fishery monitoring machinery for the purpose of reporting breaches of the regulations adopted by that State in accordance with article 10.

To this end, member States may appoint officers authorized to investigate breaches of the regulations of that State.

2. The provisions of article 12, paragraph 2, shall be applicable to breaches so established. The organization shall inform the coastal State and the flag State of the findings of any inquiries it has made. The organization shall be kept informed of the outcome of legal proceedings.

Article 18

In all parts of a region situated outside the zones in which the regulatory powers referred to in article 10 are exercised, the powers of control and prosecution shall be exercised by the flag State unless the members of the organization agree upon an international fishery monitoring régime similar to that referred to in article 17.

PART IV: INTERNATIONAL FISHERIES AUTHORITY

Article 19

The activities of the organizations may be supplemented, as necessary, by those of an international fisheries authority, either existing or to be set up,* the function of which could be:

(a) to promote the establishment of new organizations and, where a competent organization does not exist, to exercise the powers which would normally devolve upon such organizations;

(b) to encourage all types of technical assistance in respect of fisheries.

* The authority referred to in this article might be FAO.

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PART V: SETTLEMENT OF DISPUTES

Article 20

1. Any dispute which may arise in the cases referred to in these articles shall, at the request of any of the parties, be submitted for settlement to a special committee of five members, unless the parties to the dispute agree to seek a solution by other peaceful means, in accordance with Article 33 of the Charter of the United Nations.
2. The members of the special committee, one of whom shall act as chairman, shall be appointed by mutual agreement between the parties to the dispute within three months of the request for settlement in accordance with the provisions of this article. Failing agreement they shall, upon the request of any party to the dispute, be appointed by the Secretary-General of the United Nations, within a further three-month period, in consultation with the parties to the dispute and with the appropriate United Nations authorities, from among duly qualified persons not parties to the dispute and specializing in the legal, administrative or scientific aspects of fisheries, depending upon the nature of the dispute to be settled. Vacancies shall be filled in the same manner as the initial appointments were made.
3. Every State party to proceedings under these articles shall have the right to designate one person of its choice who shall have the right to participate fully in the proceedings of the special committee on the same footing as its members but without the right to vote or to take part in the drafting of the committee's decision.
4. The special committee shall so organize its own procedures as to ensure that each party has the opportunity to be heard and to present its case. It shall also decide how the costs and expenses are to be apportioned between the parties to the dispute, failing agreement by the parties on this matter.
5. The special committee shall give its decision within five months of the date of appointment of its members, unless it decides that it is necessary to extend the time-limit for a further period which shall not exceed three months.
6. In reaching its decisions, the special committee shall comply with these articles and with the rules of general international law and any special agreements reached between the parties to the dispute with a view to settling the dispute.
7. The decisions of the special committee shall be adopted by a majority vote.

Article 21

The decisions of the special committee shall be binding on the parties concerned.

The greatest possible consideration shall be paid to any recommendations accompanying these decisions.

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Article 22

If the factual basis of the award of the special committee is altered owing to substantial changes in the stock or stocks of fish or other living marine resources or in methods of fishing, any of the parties concerned may request the organization to make the necessary changes in the measures of conservation.

If a decision cannot be obtained within a reasonable time, any of the parties concerned may again resort to the procedure specified in article 20, provided that at least two years have elapsed since the original award.

PART VI: RELATIONS WITH OTHER TREATIES

Article 23

1. The provisions of these articles

- shall not prejudice the maintenance of any existing special fisheries régime existing among States members of a customs union;

- shall not preclude the establishment of a special fisheries régime among the States fishing for a particular region for that region or among States members of a customs union.

2. Where such a special régime exists, vessels of participating States fishing in the zone of another participating State shall be treated on the same footing as vessels of the latter for the purpose of article 8, paragraph 1.
